

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

JOHN M. PERRIN and  
JOHN M. PERRIN, P.C.,

Plaintiffs and  
Counter-Defendants,

vs.

Case No. 2006-1204-CK

MICHELE MATTERA,  
VILLAGE BUILDING COMPANY and  
VILLAGE DEVELOPMENT COMPANY,

Defendants and  
Counter-Plaintiffs.

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OPINION AND ORDER

Defendants Michele Mattera, Village Building Company and Village Development Company move to disqualify John Ramar as plaintiffs John M. Perrin and John M. Perrin, P.C.'s attorney.

I

Plaintiffs filed this action on March 20, 2006 asserting they were retained by defendants Mattera, Village Building and Village Development in January 2004. By June 2005, defendants had an outstanding legal fee balance of \$31,000 and continued to request or require legal services through February 2006, now owing \$67,113.05.

Plaintiffs aver plaintiff Perrin had begun negotiating the purchase of a home during this timeframe. Defendant Mattera stated defendants Village Building and Village Development were unable to pay their legal expenses. Consequently, defendant Mattera offered to inspect the house



and perform certain construction work through defendant Village Building for plaintiff Perrin to offset the owed legal fees. Defendant Mattera inspected the house in June 2005 and, based on the inspection, plaintiff Perrin purchased the home.

Plaintiffs contend defendant Mattera never disclosed he was not a licensed builder or licensed builder's salesperson. Defendant Mattera represented the work to be performed on plaintiff Perrin's house would be performed by defendant Village Building and properly licensed builders at defendant Mattera's cost of \$35,000. Thus, plaintiff Perrin believed he had hired defendant Village Building to perform the renovation work pursuant to requisite building codes and in a workmanlike manner within three weeks from July 12, 2005. However, defendant Mattera had schemed to defraud plaintiff Perrin by overstating the estimates and bills of subcontractors, providing substandard work, violating building codes, performing work without a builder's license and obtaining a single building permit although other permits were required by law.

Plaintiffs state defendants demolished the interior of the house in July 2005 and then intentionally abandoned the project for several weeks despite their promise to complete work in three weeks and being aware of plaintiff Perrin's need for the house as his residence. Defendants Mattera and Village Building did not retain plumbing, heating and electrical trades to perform work in the promised timeframe, claiming the subcontractors were not available. In reality, defendant Mattera was trying to drag the project out to ensure plaintiffs would continue providing legal services.

Plaintiffs maintain defendants attempted to increase the cost of the project in September 2005 while the house was still in a state of demolition, claiming the various trades had cost more than originally estimated although these claims were intentionally and knowingly false. After

further delays, defendants abandoned the project in December 2005 and again attempted to increase the price although they had not performed the promised services. When plaintiffs would not agree to the increased charges and pointed out the history of misrepresentations, defendant Mattera made defamatory statements that plaintiff Perrin, P.C. had committed malpractice, breached its ethical duties and breached the attorney-client privilege; he also threatened to sue for malpractice unless all legal fees were waived and made false statement to third parties regarding the work that was to be performed on plaintiff Perrin's house in an attempt to interfere with other contractual relations.

Accordingly, plaintiffs' complaint alleges: I. Breach of Contract with respect to the home renovations against defendants; II. Breach of Contract with respect to legal services against defendants; III. Violation of the Consumer Protection Act, MCL 445.901 *et seq.*, against defendants and IV. Fraud against defendant Mattera.

On May 1, 2006, defendants filed a counterclaim alleging Malpractice in the legal work performed by plaintiffs in *Village Building Co v Ispesido*, Macomb County Circuit Court, Case No. 2004-0693-CZ, before the Hon. Richard L. Caretti (the "underlying action").

Defendants now move to disqualify Ramar as plaintiffs' counsel.

## II

Defendants acknowledge Ramar was co-counsel with plaintiffs in the underlying action. This action is, at best, only nominally related to the subject matter of the underlying action. Moreover, plaintiffs maintain Ramar was only retained to provide assistance at trial in the underlying action, but that the action settled prior thereto and before Ramar's involvement therein. Hence, MRPC 1.9 is not implicated and does not serve to disqualify Ramar.

Moreover, MRPC 1.6(c) provides in pertinent part:

A lawyer may reveal:

\* \* \*

(5) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

Ramar is acting in this matter to collect legal fees and to defend against defendants' accusations of malpractice in the underlying action. Hence, MRPC 1.6(C)(5) serves to remove any conflict of interest prohibited by MRPC 1.7. Compare MRPC 1.8(b) and 1.9(c).

### III

Based on the foregoing, it is hereby

ORDERED defendants Michele Mattera, Village Building Company and Village Development Company's motion to disqualify John Ramar as plaintiffs John M. Perrin and John M. Perrin, P.C.'s attorney is DENIED.

This *Opinion and Order* neither resolves the last pending claim in this matter nor closes the case. MCR 2.602(A)(3).

SO ORDERED.

DATED:

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Peter J. Maceroni,  
Circuit Judge

cc: John Walus  
John Ramar

**PETER J. MACERONI**  
CIRCUIT JUDGE

AUG 17 2006

A TRUE COPY  
CARMELLA SABAUGH, COUNTY CLERK

BY: *[Signature]* Court Clerk